

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROCKFISH, INC., a Washington  
Corporation,

Plaintiff,

v.

UNIDENTIFIED WRECKED AND  
ABANDONED VESSEL, her engines,  
boilers, apparel, tackle, equipment,  
appurtenances, and cargo, *in rem*,

Defendant.

Case No. 2:22-01659 JLR

**~~(PROPOSED)~~ ORDER GRANTING  
JOINT MOTION TO INCORPORATE  
TERMS OF SETTLEMENT  
AGREEMENT**

**PROPOSED ORDER**

THIS DAY THIS CAUSE CAME ON TO BE HEARD on the Stipulated Motion of Plaintiff, Rockfish, Inc. and Claimants London Market Insurers, jointly moving this Court to incorporate the material terms of a settlement agreed at the Local Rule (LCR) 39.1(e) Judicial Settlement Conference on November 9, 2023, and this Court, upon consideration of the same, FINDS:

A. Rockfish, Inc. (hereinafter "Rockfish") is a Washington for profit corporation engaged in the business of maritime salvage. Jeffrey Hummel is the President of Rockfish.

B. London Market Insurers are insurers in London, England, and are the successors in interest to the London Insurers that insured certain gold, gold dust, gold bullion, and specie

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TO INCORPORATION TERMS OF SETTLEMENT  
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(hereinafter “Insured Cargo”) carried aboard the S.S. PACIFIC on November 4, 1875. Resolute Management Ltd. (hereinafter “RML”) acts as the agent of Ocean Marine Insurance Co., Ltd., the successor to Ocean Marine, Indemnity Marine, and Union Insurance Co. Mercantile Indemnity Company Limited (hereinafter “Mercantile”) is the transferee of certain business of the RSA Group companies with an interest in the Insured Cargo. Royal Exchange Assurance PLC (hereinafter “REA”) is a London Market Insurer transacting the business of insurance in London, England with an interest in the Insured Cargo. RML, Mercantile, and REA are collectively referenced herein as London Market Insurers (“LMI”).

C. The S.S. PACIFIC (hereinafter “PACIFIC”) was a 223 foot long wooden hull side-wheel passenger steamship vessel constructed in 1850 in New York.

D. On November 4, 1875, the PACIFIC, carrying passengers, crew, and certain gold bullion cargo, gold dust, and specie, departed Victoria, British Columbia on a voyage to San Francisco, California. The PACIFIC and the S/V ORPHEUS collided on the high seas, causing the PACIFIC to sink in the Pacific Ocean approximately thirty miles southwest of the Cape Flattery Lighthouse off of the coast of the State of Washington, where it currently lies submerged at a depth of more than 2,000 feet.

E. The predecessors of LMI insured the Insured Cargo under one or more marine insurance cargo policies (hereinafter “Cargo Insurance”) placed in the London Insurance Market, naming the Bank of British North America and the Bank of British Columbia as the named insureds. The insured value of the Insured Cargo provided by the terms and conditions of the Cargo Insurance in 1875 was \$78,801.00 in United States Dollars.

F. After the sinking of the PACIFIC, LMI subscribing to the Cargo Insurance, indemnified and paid the entire total loss to the named insureds for the Insured Cargo in 1875 and 1876 in the total amount of \$78,801.00 in U.S. Dollars. The official records maintained at the London Metropolitan Archives confirm contemporaneous entries for loss payments made by the predecessors of London Market Insurers for the total loss of the Insured Cargo. After paying the

total loss, LMI were subrogated to all rights, title, and ownership of the Insured Cargo by operation of law.

G. LMI did not abandon their interest in the Insured Cargo aboard the PACIFIC. LMI executed two prior salvage contracts with salvors to attempt to salvage the Insured Cargo from the PACIFIC.

H. Rockfish located the PACIFIC submerged in the Pacific Ocean. To date, no gold cargo or specie has been identified or salvaged from the wreckage of the PACIFIC.

I. On November 21, 2022, Rockfish filed a complaint in the United States District Court for the Western District of Washington seeking salvage rights over the PACIFIC and gold cargo, *Rockfish, Inc. v. Unidentified Wrecked and Abandoned Vessel*, Case No. 22-cv-1659-JLR.

J. LMI filed a SAR C(6) *Verified Statement of Interest in the Insured Cargo* in the Lawsuit on February 7, 2023. Dkt. # 29; Dkt. # 59. On April 3, 2023, LMI filed a *First Amended SAR C(6) Verified Statement of Interest in the Insured Cargo* in the Lawsuit. Dkt. # 30; Dkt. # 58.

K. Rockfish and LMI participated in a Judicial Settlement Conference with Magistrate Judge Michelle Peterson on November 9, 2023, and reached a settlement of their respective claims to the Insured Cargo.

L. This Court has incorporated the material terms of the Rockfish and LMI settlement as a final adjudication of their claims relating to LMI's ownership of the Insured Cargo, the exact amount of the salvage award against the Insured Cargo to which Rockfish shall be entitled, and the disposition of the Insured Cargo.

IT IS THEREFORE ORDERED AND ADJUDGED AS FOLLOWS:

THAT as used herein, the term "Gold Cargo" shall mean gold cargo in any form, including gold bullion, gold dust, gold bars, and specie cargo, specifically including the Insured Cargo, carried aboard the PACIFIC on November 4, 1875. The term Gold Cargo does not include personal effects of passengers or crew such as gold teeth, watches, or personal jewelry.

THAT LMI shall have a 1.598% ownership in all Gold Cargo in any form, including

1 bullion, gold dust and specie cargo carried aboard the PACIFIC on November 4, 1875. LMI shall  
2 not be required to provide further documentary evidence or testimony to prove their ownership of  
3 the Insured Cargo aboard the PACIFIC on November 4, 1875.

4 THAT Rockfish shall perform the salvage operation to salvage the Gold Cargo in a careful  
5 and prudent manner.

6 THAT Rockfish shall use commercially reasonable efforts to recover as much as possible  
7 of the Gold Cargo from the wreckage of the PACIFIC.

8 THAT all salvage operations performed by Rockfish to salvage the Gold Cargo shall be  
9 conducted at Rockfish's own sole risk and expense on a No Cure No Pay basis.

10 THAT Rockfish shall provide LMI notice of all salvage operations and shall forward LMI  
11 a written report explaining and reporting the result of each voyage, including full details,  
12 description, condition, and a list of all gold bullion, specie, coins, or dust recovered from the wreck  
13 or wreck site of the PACIFIC within two weeks (14 days) of each operation similar to what will  
14 be provided to the Court.

15 THAT this Court shall appoint a substitute custodian, mutually agreed by Rockfish and  
16 LMI, to oversee the safekeeping, preservation, packaging, and appraisal of all of the gold recovered  
17 from the wreck of the PACIFIC, including the Gold Cargo, prior to auction by an international  
18 auction house.

19 THAT LMI shall pay 1.598% of any Court-approved fee charged by the substitute  
20 custodian. The remaining 98.402% of any Court-approved fee charged by the substitute custodian  
21 shall be paid by Rockfish, unless any claimants other than LMI successfully establish a right of  
22 possession or ownership interest in the Gold Cargo, in which case the remaining 98.402% of any  
23 Court-approved fee charged by the substitute custodian shall be paid by Rockfish and such  
24 claimants on a pro-rata basis.

1 THAT any and all Gold Cargo recovered from the wreck of the PACIFIC shall be sold by  
2 an international auction house or numismatic expert mutually agreed in writing by LMI and  
3 Rockfish.

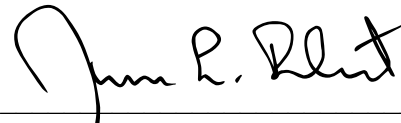
4 THAT LMI shall pay 1.598% any commission charged by the international auction house  
5 or numismatic expert for the sale of the Gold Cargo. The remaining 98.402% of any commission  
6 charged by the international auction house or numismatic expert shall be paid by Rockfish, unless  
7 any claimants other than LMI successfully establish a right of possession or ownership interest in  
8 the Gold Cargo, in which case the remaining 98.402% of any commission charged by the  
9 international auction house or numismatic expert shall be paid by Rockfish and such claimants on  
10 a pro-rata basis.

11 THAT after satisfaction of the international auction house or numismatic experts  
12 commission, LMI is entitled to 1.598% of the remaining auction net sale proceeds from the sale  
13 of the Gold Cargo. This allocation reflects LMI's ownership interest in the Insured Cargo less an  
14 agreed and stipulated salvage award for Rockfish. Rockfish is entitled to the remaining 98.402%  
15 of auction net proceeds, unless claimants other than LMI successfully establish a right of  
16 possession or ownership interest in the Gold Cargo, in which case the remaining 98.402% of any  
17 auction net proceeds shall be paid to Rockfish and such claimants on a pro-rata basis.

18 THAT if the Rockfish salvage operation for the Gold Cargo is unsuccessful by November  
19 9, 2033, LMI shall have no further obligation to Rockfish, and LMI shall be entitled to retain  
20 the salvor of their choice to search for and salvage the Insured Cargo carried aboard the PACIFIC.

21 THAT this Court shall retain exclusive jurisdiction to enforce any provision of this Order.

22 SO ORDERED AND ADJUDGED ON THIS THE 26th DAY OF JANUARY, 2024.

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THE HON. JAMES L. ROBERT  
UNITED STATES DISTRICT COURT

Presented by:

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